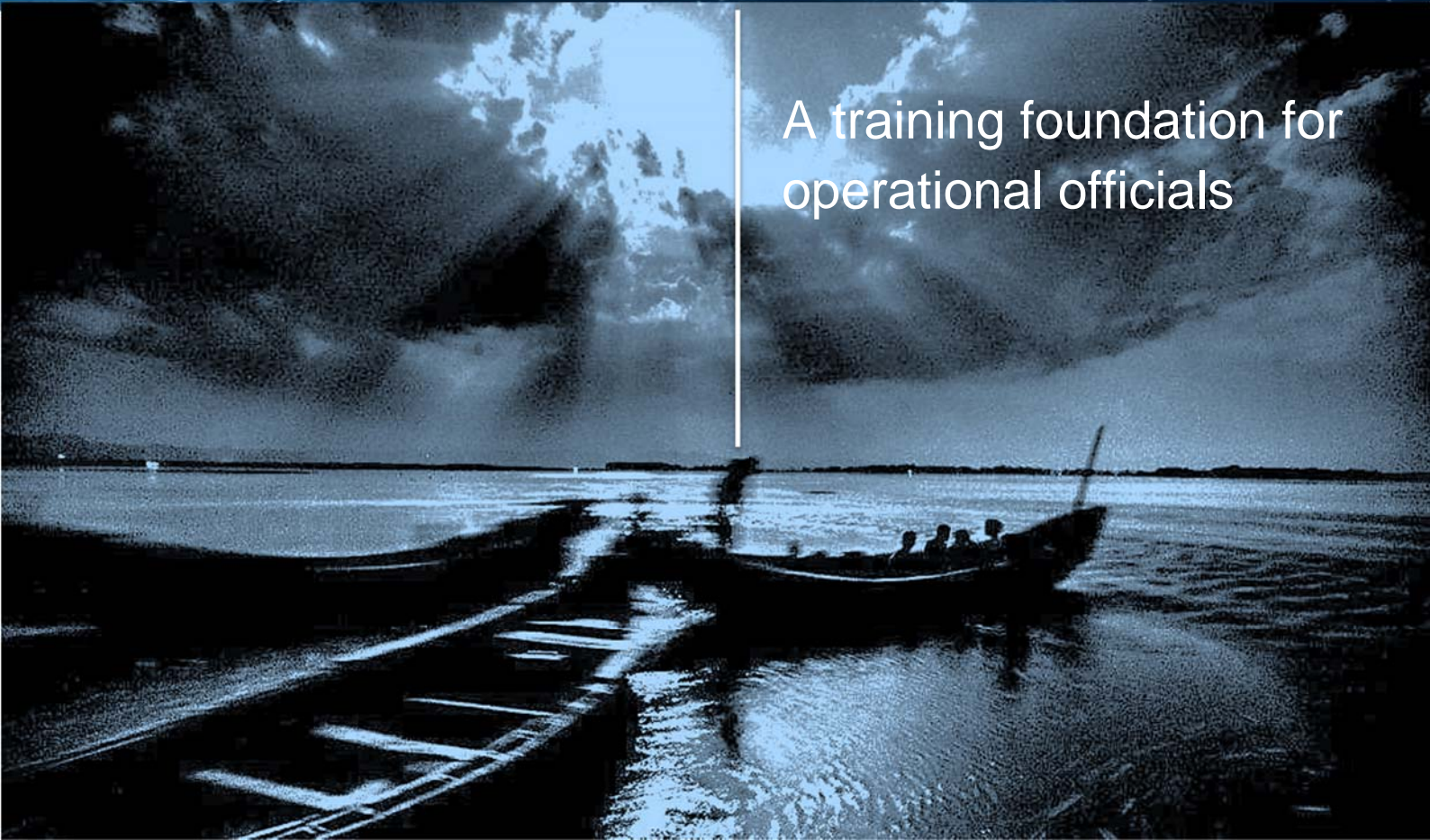


Comprehensive approaches for Addressing Irregular Movement by Sea



The Bali Process



A training foundation for
operational officials



The Bali Process

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) was established in 2002 and is a voluntary and non-binding regional consultative process co-chaired by the Governments of Australia and Indonesia and comprising over 45 member countries and organizations.

Queries about this document should be addressed to the Regional Support Office (RSO) to the Bali Process at:

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The Bali Process

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Background

Since its inception in 2002, the Bali Process has effectively raised awareness of the complex consequences of people smuggling, trafficking in persons and related transnational crime. The Regional Support Office of the Bali Process (RSO) was established by Bali Process members with the key objective of operationalizing the Bali Process' Regional Cooperation Framework (RCF). RSO activities aim to support and strengthen practical cooperation on refugee protection and international migration in this context.

Following the 2013 *Regional Roundtable on Irregular Movement by Sea*, Bali Process member states requested the RSO to support a better understanding of legal standards and policy frameworks for addressing irregular migration by sea. In this regard, the United States Department of State's Bureau of Population, Refugees and Migration (PRM) provided funding to the International Organization for Migration (IOM) to organize a pilot training workshop on *Comprehensive Approaches for Addressing Irregular Movements by Sea: International Obligations, Standards and Good Practices*. The training was jointly organized by IOM and the Office of the United Nations High Commissioner for Refugees (UNHCR), under the auspices of the RSO. Aimed towards Bali Process government officials, the workshop was held on 19-22 January 2015 in Bangkok.

The objective of the workshop was to contribute to building capacity of Bali Process member states to address challenges arising from irregular maritime migration. The workshop also provided an opportunity to identify key elements for the development of a standardized training curriculum, which could be delivered on a regular basis in the region. The training was aimed towards mid-and senior level government officials dealing with different aspects of irregular maritime movements, including border officials and naval police. Key stakeholders were invited to contribute to this initiative by acting as resource persons and delivering presentations, including representatives from IMO, UNODC, and ICRC, as well as thematic experts from IOM and UNHCR.

The "pilot" curriculum to be tested at the workshop was developed with inputs from key regional stakeholders IMO, UNODC, ILEA and ICRC which shared their perspectives and inputs during the course of its elaboration. The pilot training was held over a period of four days, with over 20 delegates representing 11 countries within the Asia-Pacific region.

Key Issues

The challenges regarding maritime movements in the Asia-Pacific region are manifold. The need to bolster regional and international collaboration has been highlighted as an essential requirement to combat transnationally operating criminal networks and to respond to related humanitarian and other challenges, adopting a holistic position. At the same time, the need for a victim-centred, humanitarian approach that ensures the provision of assistance and protection on the basis of identified needs and entitlements has been acknowledged as a precondition for successful strategies.

Maritime migration flows are often mixed, including 'economic' migrants, stateless people, and victims of human trafficking as well as individuals fleeing instability, persecution, or situations of armed conflict in their countries of origin. Although international law regulates in different specialized branches the exercise of state powers at sea, imposing also a number of obligations on them with regard to persons found in distress, their effective implementation has been problematic. Doubts as to the correct interpretation and application of these rules persist and the need for international cooperation to implement them properly renders compliance difficult in practice. This has led sometimes to lack of comprehensive responses, giving rise to complex situations, entailing loss of life. At the same time, transnational criminal networks have exploited the situation, developing ever more sophisticated systems of human trafficking and smuggling by sea, undermining states' interests and putting at risk the life and safety of migrants and refugees. Several challenges arise in this context:

1.1 The law of the sea does not provide all answers

Although the law of the sea and maritime conventions define the remit of state powers and impose a series of obligations both on flag and coastal states with regard to persons in distress at sea, they leave some questions open. They fail to clearly allocate post-rescue responsibility for those recovered at sea and to establish a precise port of disembarkation (whether the geographically closest to the shipwreck; the next port of call; one within the SAR Region of the coastal state concerned; or the 'safest' port in human rights and refugee law terms). The scope of interdiction powers in different jurisdictional maritime areas has also elicited significant debate.

1.2 Multiple legal systems are applicable

Alongside the law of the sea, different legal regimes apply at sea. General international law, safety of life and search and rescue conventions, refugee law, international migration law, international criminal law, and human rights law, may apply simultaneously, requiring a comprehensive understanding and an effort of good faith interpretation, so that all relevant obligations are complied with and implemented as appropriate.



1.3 Irregular movements by sea include people with different profiles, needs and rights

Maritime movements are often mixed and include vulnerable migrants, asylum-seekers, refugees, trafficking victims, and other persons with specific needs. A comprehensive response is one that respects the dignity and ensures the human rights of all, guaranteeing the access of persons with specific needs and corresponding rights to appropriate procedures and post-disembarkation arrangements in compliance with international obligations and following 'best practice' standards. Respecting obligations under international law, while responding to irregular migration flows, requires states to strike the right balance between their powers and interests, on the one hand, and their duties and responsibilities, on the other hand, particularly for the purposes of providing assistance and protection.

1.4 Protecting national interests and state sovereignty

The increase of ever more complex and well-organized criminal networks of trafficking in persons and people smuggling raise considerable issues of maritime safety, international protection, border control, law enforcement, and migration management that threaten national interests and state sovereignty.

1.5 The multiplicity of actors involved

Several actors have engaged in action against trafficking in persons, migrant smuggling and other forms of transnational organized crime, or to assist the victims thereof, rendering the allocation of responsibilities a key necessity. The actors concerned have, however, faced difficulties to agree on comprehensive multilateral arrangements, including action plans or regional standard operating procedures (SOPs), to distribute tasks and assign duties in a rational and fair way.

1.6 The increase of extraterritorial exercise of state powers

Maritime patrols for either interdiction or search and rescue purposes have been carried out both territorially and extraterritorially to control irregular flows, undertake border surveillance, and enforce criminal law. At times, patrols have extended beyond the territorial waters of the states concerned, covering also the high seas and the territorial waters of third countries. However, the extraterritorial exercise of state powers has legal implications, which may make the determination of legal responsibility further intricate in any given situation.

Key elements of a comprehensive approach

Against this background, the development of consultative strategies and collaborative efforts among all stakeholders is crucial. Multilateral schemes of regional and/or sub-regional cooperation at all stages of the migration cycle (pre departure, entry, stay, return and reintegration), taking all relevant challenges, obligations and concerns into account, is essential for a comprehensive approach to irregular maritime movements to thrive. The following key elements should be considered:

2.1 An integrated approach to irregular maritime movements

Overall, a comprehensive migration management response is one that combines prevention, control, protection, durable solutions and multilateral partnerships. This requires exploring possible actions that prevent irregular maritime movements through information campaigns, exchange of intelligence, dialogue between countries of origin, transit and destination, while respecting the rights of migrants, refugees, and others on the move. It also entails control / law enforcement mechanisms that allow for border integrity and state sovereignty to be maintained, while promoting inter-state collaboration and coordination. It further implies setting up protection-sensitive schemes for the provision of adequate assistance to people arriving by sea, ensuring access to differentiated processes providing for their specific rights and needs.

2.2 Multi-actor coordination and cooperation

A comprehensive approach to address the challenges posed by irregular maritime movements in a holistic way requires the involvement and participation of all relevant actors concerned in the design and implementation of joint actions and concerted policy initiatives. In addition to concerned states, specialised agencies and organizations, such as UNHCR, IOM, IMO, UNODC, as well as civil society organizations delivering services to sea arrivals should also be involved, together with the migrants, asylum seekers and refugees themselves through adequate procedures where their rights and needs can be established. The interests, needs, and entitlements of all concerned should be taken into consideration, including for an appropriate and efficient allocation of roles and responsibilities.



2.3 Multi-stage perspective

The entire migration cycle should be taken into account, with push and pull factors analyzed and understood. The root causes of irregular maritime movements, which may include lack of access to safe and regular migration channels, should also be addressed – particularly given that, without alternative options, people will continue to place their lives at risk by making unsafe boat journeys. The incentives for traffickers and smugglers to select the sea route, the aspirations and expectations of sea arrivals, etc. should be investigated for evidence-based policy responses to be adopted, catering for all different aspects of the phenomenon at all the different stages it unfolds. Data collection and analysis should be thorough and systematic. At the same time, the sharing of statistics and other sensitive information between stakeholders should take account of any risks and implications for human trafficking and smuggling victims.

2.4 The identification of common objectives for joint action

For a comprehensive, multi-actor, multi-stage approach to irregular maritime movements to develop, spaces for exchange, consultation and mutual learning, such as the proposed training workshop, should be provided at regular intervals. These venues will offer opportunities for the recognition of common concerns and the identification of potential common objectives in collaborative fashion. The development of a common understanding of the problems and challenges involved is indeed a precondition for engagement in joint initiatives and the design of common policies.

2.5 The harmonisation of policies and procedures

On the basis of a common understanding of challenges and set objectives, stakeholders should harmonise and coordinate policies and procedures to effectively respond to irregular sea movements. Several types of intervention require special attention in this regard, including search and rescue and disembarkation; interdiction and law enforcement; as well as reception of sea arrivals through adequate post-disembarkation arrangements. Multiple activities involved in these different types of intervention require cooperation and coordination to be effective, comprising border surveillance and maritime police patrols; the detection and combatting of trafficking and smuggling activities through prevention measures, protection of victims and prosecution of perpetrators; the provision of search and rescue services; the successful conclusion of disembarkation operations; as well as the identification, referral, processing and delivery of solutions to sea arrivals.

2.6 A humanitarian approach

There are serious concerns about the loss of life, injury, trauma and abuse affecting migrants, asylum-seekers and refugees traveling by sea. Much media and public attention has focused on the irregular nature of these flows, while most of those undertaking these journeys have no other choice but to entrust themselves to smugglers and traffickers. They fall victim of criminal networks that exploit their vulnerability, putting lives at risk and violating human rights for profit. It is therefore critical to ensure closer cooperation between States and other relevant actors to reducing loss of life and addressing the drivers of dangerous sea journeys. It is equally essential to guarantee that responses by States upon arrival and disembarkation uphold human rights and dignity and meet specific needs for protection of migrants, asylum-seekers and refugees. Such cooperation is also consubstantial to identifying, prosecuting and punishing the criminal gangs responsible for the abuse.



TRAINING FRAMEWORK

Training Objectives

The key objectives of the comprehensive approaches for addressing irregular movement by sea are:

- 1) To provide an informed overview of the current situation regarding irregular maritime movements, both globally and within the region, identifying trends through available statistical data and expert reports;
- 2) To introduce the legal instruments applying in these situations, highlighting best practice standards of implementation, taking examples from within the region as well as cross-regionally from state practice in similar settings;
- 3) To distinguish the different groups of sea arrivals so as to identify their specific needs and rights under international law and corresponding state obligations in their regard, to tailor adequate responses in domestic / regional rules and procedures;
- 4) To apply the relevant standards to case studies and other practical exercises that allow participants to consolidate knowledge through 'problem solving' and 'learning-by-doing' techniques, pertinent to their daily activities in their respective positions within their national administrations;
- 5) To provide participants with an opportunity to exchange experiences and share effective policies, so as to foster the development of a common understanding of the issues at stake, the identification of common objectives for potential joint action, and discuss possibilities for harmonised policies and procedures to deal with irregular maritime movements within the region in line with international legal rules and best practice standards.

Methodology and delivery

To meet its objectives, this training curriculum has been designed with the overall goal of assisting Bali Process member states to develop the aforementioned comprehensive approach to irregular maritime movements in practice.

4.1 Course format

This course includes lectures, case studies, and group exercises, incorporating inter-active training methods. The programme starts with a general introduction of overall aims and purposes of the workshop and the presentation of global and regional trends, setting the scene to concrete content-based and policy-driven sessions. Substantive sessions follow, dealing with key themes in the context of irregular movements by sea, comprising international legal obligations and 'best practice' standards formulated at global and regional level. A number of practical and participatory sessions complete the curriculum, incorporating group exercises for participants to develop appropriate responses to case studies and scenarios drawing from real-life experiences of Bali Process members and countries from other regions facing similar challenges. Their purpose is to help participants apply the knowledge acquired and to foster exchanges of personal insights and 'lessons learned' from their own practices.

4.2 Methodology:

Attention will be drawn to the relevant legal instruments, actors and institutions involved to share their experiences on how movements of people by sea, including migrants, asylum-seekers and refugees, has been, and should be, governed. Practical examples and best practices are introduced during the sessions, as relevant. To this end, sessions will be facilitated by specialists from IOM, UNHCR and other key regional stakeholders (IMO, UNODC, ICRC, ILEA, etc.) as well as independent experts and government officials with both global and regional expertise on issues related to irregular maritime movements. Group discussions and inter-active exercises should lead participants to debate and enhance their understanding of the phenomenon. This 'integrated approach' to the examination of irregular movements by sea, combining theory and practice with discussion and problem-solving exercises, will serve to better respond to the phenomenon and possibly inform further debate within RSO initiatives and Bali Process discussions on policy development and regional cooperation. The final goal is, for participants to jointly analyze common challenges, identify or formulate possible solutions, and consider any outstanding problems, pointing the way ahead for the development of sustainable policy and capacity building in the region.

4.3 Target audience and length of training:

The training will bring together a maximum of 30 participants for a period of five days. The workshop is designed for mid and senior level officials dealing with different aspects of irregular maritime movements including border officials, naval police, port authorities, internal security, asylum services, etc., and legal/policy makers in the area of maritime law, international protection and border management.

It is foreseen that future trainings will be hosted under the auspices of the RSO in collaboration with IOM and UNHCR.

Training Outline

Day One

PART ONE: INTRODUCTION

Session 1: Welcome and Introduction to Training

PURPOSE: Introduction of key objectives and organization of workshop programme, presenting background, methodology, and final goals. Introduction of workshop participants and their experience with irregular maritime flows.

DURATION: 60 mins.

Session 2: Overview of irregular migration by sea: Global and regional trends

PURPOSE: Setting the general background to the debate through a brief presentation and short films on key issues.

DURATION: 45 mins.

CONTENT / LEARNING OBJECTIVES:

- Overall presentation of trends in irregular movements of people by sea, drawing on available statistics, underlining trends and challenges at global and regional level.
- A short film will be shown to illustrate the global dimension of 'boat people' in the 21st century and introduce current realities in key regional settings, including the Mediterranean, the Caribbean, the Gulf of Aden, as well as the Asia & Pacific region. This will allow discussion

on similarities and differences with the situation in the region, and provide a platform for subsequent detailed discussions on theory and practice.

- Overview of irregular migration by sea compared to irregular migration by land and air. The presentation will provide an overview on numbers under respective routes, group profiles, their motivations, rationales and modus operandi. This will allow the specificities of maritime routes and motivations behind the choice of this route over land and air.

PART TWO: INTERNATIONAL LEGAL STANDARDS

Session 3: Law of the sea in the context of irregular movements of people by sea

PURPOSE: General introduction to the Law of the Sea Convention (UNCLOS) regime and its role in the context of irregular movements of people by sea,¹ paying particular attention to the regulation of the different jurisdictional zones (territorial waters; contiguous zone; Exclusive Economic Zone (EEZ); high seas) and applicable state powers and state obligations per zone. The problem of stateless/flagless vessels and the duty to render assistance under Article 98 UNCLOS/customary law will also be briefly introduced in this session, leaving the detailed study of the maritime conventions (SAR/SOLAS/FAL) for a dedicated session in Day 2.

DURATION: 75 mins.

CONTENT / LEARNING OBJECTIVES:

- The basic structure and content of UNCLOS as the 'constitution of the oceans' will be introduced, paying particular attention to the regime applicable per jurisdictional area, including the rights and duties of both coastal and flag states per area. The customary law nature of UNCLOS will be mentioned at this point. In this context, the role and function of IMO will also be outlined.

¹ UN Convention on the Law of the Sea (UNCLOS), 1833 UNTS 3.

- The regime applicable to internal waters and the territorial sea will be expounded in detail. Article 25 UNCLOS allows coastal States to adopt 'the necessary steps ... to prevent passage' which is non-innocent. The precise boundaries of what constitutes 'non-innocent passage' will be discussed. The case of vessels in distress and their entitlement to enter port and take refuge will also be addressed in this context.
- The right of police applicable within the contiguous zone will be presented. Particular attention will be paid to Article 33(1) UNCLOS, allowing 'the coastal State [to] exercise the control *necessary* to prevent infringement of its customs, fiscal, immigration and sanitary laws and regulations within its territory or territorial sea'. What 'necessary' entails in this framework will also be discussed.
- The EEZ's regime will be briefly expounded, with an indication of its breadth, scope, and state entitlements provided (including those of both coastal and flag states).
- The implications of the freedom of navigation principle and the flag state jurisdiction rule governing the high seas will be thoroughly explained, emphasising that any exceptions must be explicitly authorised or otherwise 'conferred by treaty' for other states to exercise jurisdiction. The limited instances where the UNCLOS provides for exceptional cases in which states may exercise jurisdiction with regard to vessels flying the flag of another state will be enumerated. The particular case of stateless/flagless ships will be mentioned, especially the debate surrounding Article 110 UNCLOS and the extent to which the 'right of visit' it provides may amount to an interdiction power. Reference will be made to flag state duties regarding safety of navigation and 'hot pursuit' rules.
- The duty to render assistance to persons in distress at sea, contemplated in Article 98 UNCLOS, will be introduced, leaving a thorough discussion of the SAR/SOLAS Conventions for Day 2. The personal, material and territorial scope of application of this duty and the related rescue obligation will be expounded here.
- The presentation will be concluded by a 15 minutes quiz. The quiz will be performed in groups of two; feedback for right and wrong answers will be provided. The objective is to allow participants to check whether key elements have been understood as well as to recap essential content.

Session 4: International migration law in the context of irregular movements of people by sea and the holistic approach to irregular migration

PURPOSE: Focus on state powers to administer migration flows and on the rights of migrants limiting this general prerogative, covering key entitlements in the context of irregular and mixed movements of people by sea, as recognized in international human rights law instruments, consular law, and customary international law, including IHL.² The role and contribution of IOM, other relevant actors, and partner organizations will also be introduced.

DURATION: 75 mins.

CONTENT / LEARNING OBJECTIVES:

- Presentation of the general right of states to control the entry of non-nationals into its territory, including by sea, as limited only on the basis of international obligations deriving from treaty and/or customary law.
- Introduction to holistic migration management of irregular migration including key elements, such as prevention, border control, international protection and assistance, addressing irregular stay (regularisation, AVR). The latter issues will only be touched upon briefly as a session on Day 4 will cover durable solutions in detail, including legal channels. Mention will also be made of the role of regional arrangements in addressing related challenges.
- Discussion of the concept of mixed migration and its application in the context of sea journeys, exploring its implications for states and how they may exercise their powers to control the movement of persons by sea.
- The role and function of IOM, other relevant actors, and partner organizations will be highlighted in this framework.
- Special emphasis will be put on the demarcation of the personal, material and territorial scope of application of the key rights and entitlements of migrants involved in irregular movements of people by sea, so as to clearly delineate the content of the key obligations binding upon states in this context. Relevant sources of international human rights law, consular law, and customary international law, including IHL, will be identified and expounded.

² D Guilfoyle and E Papastavridis, 'Mapping Disembarkation Options: Towards Strengthening Cooperation in Managing Irregular Movements by Sea', Background Paper, 3-4 March 2014, Bangkok, Thailand, available at: <http://www.refworld.org/docid/5346438f4.html>, pp. 7-9 and 18-19.

- Particular attention will be paid to the rights to leave any country including one's own, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment (including an entitlement to adequate treatment upon rescue/interception), the prohibition of collective expulsion, the prohibition of arbitrary detention (including onboard vessels at sea), the right to consular protection and assistance to voluntary repatriation, and the right to fair procedures and to an effective remedy, where any of the substantive rights listed may have been violated. Issues related to refugees and asylum, including the right to seek asylum and the principle of *non-refoulement*, will be discussed in detail during the session on international refugee law.
- The impact of extraterritoriality and the fact that rights/obligations may extend beyond the territorial frontiers of the state concerned, provided migrants come under the remit of its authority and control will be clarified. The concept of jurisdiction / 'effective control' will be explained for the purpose.
- The presentation will be concluded by a 15 minutes quiz. The quiz will be performed in groups of two; feedback for right and wrong answers will be provided. The objective is to allow participants to check whether key elements have been understood as well as to recap essential content.

Session 5: International refugee law in the context of irregular movements of people by sea

PURPOSE: Introduction of the role and importance of international refugee law in the context of irregular sea movements, drawing on the 1951 Refugee Convention and its 1967 Protocol as well as relevant EXCOM Conclusions, related human rights instruments, and UNHCR/IMO Guidelines regarding the treatment of persons recovered at sea who may be in need of international protection.

DURATION: 75 mins.

CONTENT / LEARNING OBJECTIVES:

- The overall regime of the 1951 Convention and 1967 Protocol will be presented and the role and function of UNHCR as guardian outlined.
- Special emphasis will be made on the provisions regarding the refugee definition (including people falling under extended refugee definitions in regional instruments, including the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, the 1984 Cartagena Declaration on Refugees, and the 1966 Bangkok Principles on the Status and Treatment of Refugees), the right to seek asylum, and the principles of *non-refoulement* and non-penalization for illegal entry (including Articles 1, 3, 31 and 33 of the 1951 Convention and relevant principles of customary international law) and their implications for how irregular maritime movements may be administered by the states concerned. The scope of application of these rights and concomitant state obligations will be expounded in detail, paying particular attention to the possibility of extraterritorial application.³ Relevant EXCOM conclusions and UNHCR Guidelines on the correct implementation of these rights/duties will be mentioned.
- Other categories of people of concern to UNHCR in need of, or entitled to, international protection, including asylum seekers and stateless persons, and concepts/schemes such as complementary/subsidiary protection and temporary protection will also be presented. The issue of durable solutions may be briefly introduced, but detailed discussions will be left to the dedicated session on Day 4.
- Relevant standards of treatment of asylum seekers and refugees (in the wide sense), as relevant to irregular maritime arrivals, may also be briefly introduced, without pre-empting

³ UNHCR, Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45f17a1a4&page=search>.

Detailed discussions during Day 2 and Day 3. In such case, IMO/UNHCR Guidelines on search and rescue, disembarkation and first-line reception,⁴ the 10-Point Plan of Action,⁵ the Djibouti Conclusions,⁶ and the Global Initiative on Protection at Sea⁷ may be mentioned.

- The presentation will be concluded by a 15 minutes quiz. The quiz will be performed in groups of two; feedback for right and wrong answers will be provided. The objective is to allow participants to check whether key elements have been understood as well as to recap essential content.

⁴ UNHCR, IMO and ICS, *Rescue at Sea. A Guide to Principles and Practice as Applied to Refugees and Migrants*, January 2015, available at: <http://www.refworld.org/docid/54b36554.html>.

⁵ UNHCR, *Refugee Protection and Mixed Migration: a 10-Point Plan of Action*, www.unhcr.org/protect/PROTECTION/4742a30b4.pdf.

⁶ Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea held in Djibouti, 8-10 November 2011, available at: <http://www.refworld.org/docid/4ede0d392.html>.

⁷ UNHCR, *Global Initiative for Protection at Sea*, 1 May 2014, available at:

<http://www.unhcr.org/5375db0d9.html>.

Session 6: International law on transnational crime in the context of irregular movements of people by sea: Smuggling of migrants and trafficking in persons

PURPOSE: Introduction to the UN Convention on Transnational Organized Crime (UNTOC) and UNODC's role as custodian. Presentation of key provisions of the Palermo Protocols on the Smuggling of Migrants by Land, Sea and Air (SoM), and on the Prevention, Suppression and Punishment of Trafficking in Persons, especially women and children (TiP), as they relate to irregular movements of people by sea.⁸

DURATION: 75 mins.

CONTENT / LEARNING OBJECTIVES:

- Introduction of UNTOC and UNODC's role as custodian.
- Discussion of key provisions of the Palermo Protocols and their impact on the regulation of irregular movements of persons by sea. Emphasis will be put on the distinction between smuggling and trafficking, with examples to illustrate the differences; and on the definition of each of these crimes, underlining the need for financial/material benefit and intentionality (*mens rea*) as essential components, thereby excluding actions of humanitarian assistance, 'self-smuggling' or mere 'transportation' of migrants from punishment and prosecution.⁹ The need to separate and protect victims from perpetrators and the importance of saving clauses in Articles 14 and 19 of each Protocol will also be highlighted.
- Regarding human trafficking, the rules on protection and assistance of victims (Articles 2(b) and 6, TiP Protocol) and their status in receiving states (Article 7, TiP Protocol), as well as other measures to prevent and combat trafficking in persons will be detailed.
- Regarding smuggling, cooperation related to smuggling of migrants by sea (Article 7, SoM Protocol), measures against the smuggling of migrants by sea (Article 8, SoM Protocol), safeguards to ensure the safety and humane treatment of persons on board and the security of the vessel concerned (Article 9(1)(a)(b), SoM Protocol) will be specified.

⁸ Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, 39 *UNTS* 55; and Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 96 *UNTS* 271. See also, D Guilfoyle and E Papastavridis, Background Paper, above note 2, pp. 10-12.

⁹ D Guilfoyle and E Papastavridis, Background Paper, above note 2, p. 17.

- International cooperation tools under Article 18 UNTOC, including for the purposes of collection of evidence, prosecution of offenders, mutual legal assistance and extradition, to ensure compliance with and adequate implementation of the Palermo Protocols at national, regional and international level will also be examined.¹⁰
- The presentation will be concluded by a 15 minutes quiz. The quiz will be performed in groups of two; feedback for right and wrong answers will be provided. The objective is to allow participants to check whether key elements have been understood as well as to recap essential content.

¹⁰ Ibid., pp. 21-22.

Day Two

PART TWO: INTERNATIONAL LEGAL STANDARDS cont.

Session 7: Common and differentiated approaches in dealing with vulnerable migrants, refugees, asylum seekers, UASC, minors, VoT, women, elderly, health conditions

PURPOSE: Detailed discussion on mixed migration and the different categories of persons comprised within this notion. Presentation of particular factual circumstances giving rise to specific needs and/or human rights protections applicable in each case (on top of general entitlements explored in previous sessions) to cater for accrued levels of vulnerability of those concerned,¹¹ and of recommended and best practices.

DURATION: 60 mins.

CONTENT / LEARNING OBJECTIVES:

- Beyond groups such as asylum-seekers, refugees, and victims of trafficking and/or smuggling that were discussed in previous sessions, some additional profiles will be introduced to enable a full understanding of the mixed nature of people moving by sea. These include unaccompanied and separated children (UASC), minors, victims of torture or other trauma, women, elderly and/or disabled persons, etc.
- These additional groups have received special attention in international legal instruments providing for their specific needs and entitlements.¹² Reference will be made to the relevant provisions of applicable international human rights instruments.¹³ The scope of application and legal implications of ensuing obligations for the management of irregular movements of people by sea will be expounded as appropriate, taking account of both substantive and procedural aspects.

¹¹ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, available at: <http://www.ohchr.org/Documents/Press/OHCHR%20Recommended%20Guidelines.pdf>.

¹² D Guilfoyle and E Papastavridis, Background Paper, above note 2, p. 19-21.

¹³ Convention on the Rights of the Child, 1577 *UNTS* 3, and its Optional Protocols on child soldiers and child sale and exploitation, G.A. Res. 54/263, Annex I, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/54/49 (2000) and G.A. Res 54/263, U.N. GAOR, 54th Sess., Annex II, U.N. Doc. A/RES/54/263 (2002) respectively; Convention Against Torture, 1465 *UNTS* 85; the Convention on the Elimination of All Forms of Discrimination Against Women, 1249 *UNTS* 13; and the Convention on the Rights of Persons with Disabilities, 2515 *UNTS* 3. See also CRC General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, U.N. Doc. CRC/GC/2005/6, 1 September 2005.

- The practical implications of these obligations will also be highlighted, paying particular attention to adequate processes and material arrangements to be established to identify and cater for those with international protection needs as well as other groups with vulnerabilities and specific needs, and to provide for tailored outcomes and solutions. Best practices in designing and implementing differentiated approaches to respond to the specific needs and rights of different groups will be shared through discussion with and amongst participants. Reference may be made in this framework to the 10-Point Plan of Action,¹⁴ the Djibouti Conclusions,¹⁵ and the Global Initiative on Protection at Sea, as they relate to differentiated approaches in dealing with sea arrivals with particular needs. In this framework, best practices identified in implementing common and differentiated approaches will also be mentioned – without, however, pre-empting general discussions on post-disembarkation reception and assistance to be covered at length in a dedicated session during Day 3.

Session 8: Group exercise: case studies to apply international standards and principles

OUTLINE: Mapping out exercise to apply international standards and principles discussed in the previous sessions, on international maritime, migration, and refugee law and international law regarding transnational crime, to a real-world scenario to appreciate how numerous legal instruments from different but inter-related bodies of law interact with one another and apply concurrently to situations of people moving irregularly by sea. The final goal is to understand how the relationship between the different regimes should be managed in practice.

DURATION: 120 mins.

PART II: APPROPRIATE PREVENTION, CONTROL, AND RESCUE MEASURES WITHIN A HUMAN RIGHTS FRAMEWORK

¹⁴ UNHCR, Refugee Protection and Mixed Migration: a 10-Point Plan of Action, especially chaps 5 to 9, available at: www.unhcr.org/protect/PROTECTION/4742a30b4.pdf.

¹⁵ Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea held in Djibouti, 8-10 November 2011, available at: <http://www.refworld.org/docid/4ede0d392.html>.

Session 9: Interception and rescue at sea: international standards and best practices

PURPOSE: Detailed discussion on interdiction powers and search and rescue at sea, introducing key international standards from the maritime conventions and best practice guidelines codified by IMO. The International Convention on Salvage; the Convention on Maritime Search and Rescue (SAR); the Convention for the Safety of Life at Sea (SOLAS); the Convention on Facilitation of International Maritime Traffic (FAL) in addition to relevant IMO Guidelines on stowaways, search and rescue, and disembarkation will be covered.¹⁶ The discussion of key terms and their implications, including 'distress', 'place of safety', etc. will be introduced, but the bulk of the practical dimension of disembarkation will be left for a dedicated session in Day 3.

DURATION: 90 mins.

(20-30 mins for interdiction; 60 mins for search and rescue)

CONTENT / LEARNING OBJECTIVES:

- Building on the session introducing the Law of the Sea on Day 1, the first part of this session will delve into the UNCLOS regime on interdiction powers applicable at sea per jurisdictional area and the fact that these remain subject to the Convention itself and to 'other rules of international law'.¹⁷
- The concept of interdiction will be defined, with examples of actions that may amount to it. How powers of interdiction are regulated per jurisdictional area should be clarified, distinguishing the regimes applicable within national jurisdiction (i.e. territorial sea / contiguous zone) and beyond (i.e. high seas / territorial sea of a third country) and noting the limits existing to state authority in this framework. A brief re-count of Articles 25 and 33 UNCLOS from this perspective will be carried out. Interdiction under Article 56 UNCLOS regarding sovereign rights within EEZ and the limits thereof will be presented. On the high seas, the case of unregistered small vessels will be discussed in detail, including whether

¹⁶ D Guilfoyle and E Papastavridis, Background Paper, above note 2, pp. 2-7, 12-13, and 18-19.

¹⁷ Arts 2(3) and 87(1) UNCLOS.

they are stateless and whether Article 110 UNCLOS allows states to exercise jurisdiction against them, including acts of interdiction.¹⁸ Additional provisions

- on interdiction in the Palermo Protocols should also be noted at this point (Articles 7-8 SoM) together with related guarantees (Article 9 SoM).
- The links / transition between an act of interdiction and rescue at sea will be elucidated, with differences and similarities highlighted in terms of scope of application, geographical extent, need of flag state consent, and related requirements.
- Search and rescue obligations will then be thoroughly presented, building on the discussion on Article 98 UNCLOS from Day 1, which will be briefly reintroduced. In this context, obligations on both coastal and flag states under the SAR and SOLAS Conventions to render assistance to persons in distress at sea; to proceed to their rescue; to set up, run and coordinate coast watching and SAR services on a continuous basis; and to delimit SAR regions, will be detailed.¹⁹ The problem of concurrent responsibilities, the absence of a definition of what constitutes 'distress',²⁰ and whether obligations of conduct (as opposed to obligations of result) are effective in this framework will be highlighted.
- The SAR and SOLAS amendments, including a duty to deliver survivors to a place of safety, will also be discussed, paying particular attention to what constitutes a 'place of safety' and what 'safety' itself may entail for different categories of migrants. The requirement of compliance with *non-refoulement* and related guarantees as well as applicable plans and procedures to follow in distress situations will be pointed out. Emphasis will be placed on the SAR state duty to 'exercise primary responsibility for ensuring ... co-ordination and co-operation occurs' in this context.²¹ The UNHCR, IMO and ICS *Rescue at Sea Guide* will be briefly presented in preparation of the exercise in the following session.²²
- The obligation of disembarkation will be briefly introduced as well, without pre-empting discussion within dedicated sessions during Day 3.

¹⁸ D Guilfoyle and E Papastavridis, Background Paper, above note 2, pp. 14-15.

¹⁹ *Ibid.*, p. 18.

²⁰ *Ibid.*, p. 14.

²¹ SOLAS, Chapter V, Reg 33(1.1).

²² IMO, UNHCR and ICS, *Rescue at Sea. A Guide to Principles and Practice as Applied to Refugees and Migrants*, January 2015, available at: <http://www.refworld.org/docid/54b365554.html>.

- The rules governing stowaways will also be outlined, with the FAL Convention in mind. The notion of 'stowaway' will be defined and the rules applicable to measures to prevent their embarkation and provide for their disembarkation upon detection, in conformity with *non-refoulement* and human rights standards will be presented.

Session 10: Group exercise: Case study on rescue at sea

OUTLINE: On the basis of content discussed in the previous sessions from Day 2, this exercise will aim to examine two case scenarios, one of a vessel in distress at sea and one on interception, to consider the key issues of the situation, including humanitarian aspects, and explore adequate responses.

DURATION: 120 mins.

Day Three

PART II: APPROPRIATE PREVENTION, CONTROL, AND RESCUE MEASURES WITHIN A HUMAN RIGHTS FRAMEWORK cont.

Session 11: Law enforcement against transnational criminal networks

PURPOSE: Holistic strategies to counter migrant smuggling and trafficking in persons are part and parcel of a comprehensive approach to irregular movements of persons by sea. This session will thus focus on the practical aspect of policy design and implementation of anti-trafficking and anti-smuggling law enforcement action, following the ‘three Ps’ and the ‘three Rs’ models (see below), in accordance with international law and best practice standards.

DURATION: 90 mins.

CONTENT / LEARNING OBJECTIVES:

- The overall aim of this session is for participants to gain practical knowledge of law enforcement action against transnational criminal networks responsible for migrant smuggling and human trafficking by sea. An expert from a partner institution will facilitate it, covering all relevant aspects of the smuggling/trafficking cycle – comprising the ‘**three Ps**’ of prevention, detection/prosecution, and protection. The importance of partnerships and cooperation between all relevant actors across jurisdictions for the success of anti-trafficking/anti-smuggling operations will be emphasized in this context.
- Under ‘prevention’, the utility of public awareness campaigns that inform and educate communities in source and destination countries about migrant smuggling and human trafficking will be discussed. The necessity to combine this with other cross-cutting initiatives for prevention to be effective will also be presented. Issues such as labor law protection and enforcement, ethical recruitment programmes and business standards, especially in key sectors typically targeted by smugglers and traffickers will be introduced.
- Under ‘detection and prosecution’, the need for effective monitoring, information collection and intelligence analysis and dissemination, mission planning, deployment, and evaluation will be presented. Key elements of implementation, including forgery detection and control will be examined. Experience gained through the UNODC’s Port Intelligence Unit project will be shared with participants. An introduction to suspicious vessel detection and document fraud examination tools will also be outlined.

- Under 'protection', the '**three Rs**' paradigm – including rescue, rehabilitation, and reintegration of victims of trafficking and abuse – will be presented. Victim identification measures and reporting channels will be discussed. The need for effective partnerships between law enforcement and service providers will be noted, especially for the purposes of cooperation to facilitate participation in criminal justice and civil proceedings. Rehabilitation and reintegration measures, including access to educational, vocational and economic opportunities or to voluntary repatriation schemes will only be briefly mentioned, without pre-empting discussions on 'Durable Solutions' during Day 5.
- The key features of the UNODC's Port Intelligence Unit project²³ will be presented as an illustration of holistic engagement with the disruption of maritime human trafficking and migrant smuggling activities in accordance with international standards.

²³ The PIU project aims to increase intelligence-led investigative capacities and thereby prevent maritime migrant smuggling in Southeast Asia. Strategically situated for a more effective response, the PIUs gather migrant smuggling intelligence from beyond their immediate locations and share it with local and international operational law enforcement operatives. For further details, see UNODC, *Intelligence Unit opens in a key Cambodian seaport to combat migrant smuggling*, 3 June 2013, available at: <http://www.unodc.org/southeastasiaandpacific/en/cambodia/2013/06/migrant-smuggling/story.html>.

Session 12: Joint law enforcement operations against transnational criminal networks

PURPOSE: Either a field visit or alternatively a simulation exercise on investigations techniques of a transnational organized criminal ring involved in migrant smuggling from Africa to South-East Asia will be organised, drawing on examples from effective experiences of governments in the region and beyond, to put in practice the rules and principles learned in previous sessions.

DURATION: 240 mins.

CONTENT / LEARNING OBJECTIVES:

- The overall objective of the exercise is to recreate a hypothetical scenario to simulate the investigation of an organized transnational criminal network involved in migrant smuggling. Participants will work in small groups (5-6 people) and receive 8 different, consecutive paper feeds, which update the scenario with additional investigative leads and information, reproducing real-life circumstances. For each paper feed, participants will have a limited time (15 to 30 minutes) to analyze the information and prepare follow-up actions based on the updated situation report. At the end of the exercise, each team will present the findings of their operation to the whole group, using PowerPoint slides and/or a flipchart/whiteboard to visualize the results.
- The exercise is aimed at enhancing practical and inter-personal relational skills amongst participants as well as operational and investigation abilities in an international environment regarding the investigation of smuggling cases, thereby facilitating a cooperative and coordinated approach for joint activities on the ground.
- For the purpose, participants will analyze security- and investigation-relevant incidents; they will elaborate appropriate (first) responses from the investigative point of view; understand the variety and complementarity of national and international tools available in this area; identify best practices of effective cooperation at international and regional level; and develop a schematic way to analyze investigative information to effectively prevent and prosecute organized transnational criminal networks involved in migrant smuggling.

Day Four

PART III: DISEMBARKATION AND POST-DISEMBARKATION

Session 13: Disembarkation: Rules and realities

PURPOSE: Brief presentation of the applicable international legal framework relevant to disembarkation, including an introduction of key issues from the RSO's Disembarkation Mapping Meeting in March 2014 (with the Co-Chair's Summary of the Meeting being shared and distributed amongst participants),²⁴ followed by a presentation of a government on concrete application of standards and tools that have been developed (e.g. a national framework for disembarkation), with a view to illustrate effective practices, cooperation with other countries, solutions and challenges. The session will focus on discussion with participants on similar/dissimilar experiences at domestic level, including means and recommendations at operational level.

DURATION: 60 mins.

CONTENT / LEARNING OBJECTIVES:

- Building on sessions during Day 2 on search and rescue, the SAR and SOLAS amendments introducing a duty to deliver survivors to a place of safety will be briefly discussed. Chapter III of the SAR Convention, especially Rules 3.1.6.4 and 3.1.9, respectively on the obligation of identification of a place of disembarkation and on the primary responsibility of the SAR region state for ensuring cooperation and coordination regarding disembarkation operations, will be presented. The irrelevance of the nationality or status of survivors for rescue and disembarkation purposes will be noted and the key question of whether there is any residual obligation upon the coastal State, in whose SAR region the rescue operation took place, to permit disembarkation of rescued persons in its territory if no other solution can be found will be thoroughly examined.²⁵
- The duty to identify an appropriate place of disembarkation where safety can be guaranteed in accordance with *non-refoulement*²⁶ and related human rights standards, 'taking into

²⁴ Co-Chairs' Summary, 'Mapping Disembarkation Options: Towards Strengthening Cooperation in Managing Irregular Movements by Sea', 3-4 March 2014, Bangkok, Thailand.

²⁵ D Guilfoyle and E Papastavridis, Background Paper, above note 2, pp. 16-17.

²⁶ Art 33, 1951 Refugee Convention; Art 7, ICCPR; Art 3, UNCAT; Art 37, CRC; 2004 IMO Guidelines, para. 6.17.

account the particular circumstances of the case',²⁷ will be mentioned. The IMO *Guidelines on the Treatment of Persons Rescued at Sea* (in particular, paras. 6.12, 6.13, 6.15, 6.17, 6.20) together with

- The relevant IMO *Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea* (especially Principle No. 3) will be taken into account in this regard. Guarantees within the Palermo Protocols concerning the obligation to protect and assist smuggling and trafficking victims will also be considered.²⁸
- The requirements for flag and coastal states to adopt appropriate legislation and policy plans at national level to discharge their obligations and facilitate disembarkation at the earliest opportunity will be examined. The need for states to cooperate among themselves at regional and international level to adequately implement and comply with their international commitments in this regard will also be noted – without going into substantive considerations, which will be the object of dedicated sessions during Day 5.
- An example of a national framework, including concrete tools used, mechanisms of referral and coordination systems as well as means of international cooperation for joint action, will be examined in detail. The Indonesian initiative on mapping disembarkation options to undertake the implementation of individual responsibilities holistically and in consultation with expert organizations may be used for the purpose. The reasons that led the government to adopt such a strategy will be presented, together with the key features of the plan devised, and the practical steps undertaken so far. The final goal will be for participants to identify best practices and exchange views in this regard.

²⁷ SAR Annex 3.1.9; SOLAS, chap. V, Reg. 33.1-1.

²⁸ Art 2(b), TiH Protocol; Art 16, SoM Protocol.

Session 14: Group exercise: Testing disembarkation options in real life case scenarios

OUTLINE: Drawing on the 'Mapping Disembarkation Options' Background Paper, commissioned by UNHCR,²⁹ the exercise will consist in participants, working in small groups, testing different disembarkation possibilities in different ports (the 'first port of call', the 'closest safe port', the 'safest port', the 'port of embarkation', etc.), taking account of different needs and entitlements of those rescued at sea, applying knowledge from preceding sessions to a real-life scenario. Although there will be a dedicated session in Day 5, the need for regional cooperation (at least between the flag State(s)/coastal State(s) involved) will be taken into account to solve the specific case.³⁰

DURATION: 120 mins.

²⁹ D Guilfoyle and E Papastavridis, Background Paper, above note 2.

³⁰ Based on UNHCR exercise used in Jakarta 2014.



Session 15: Post- disembarkation: Initial reception and assistance

PURPOSE: Reception and temporary protection and/or stay arrangements, as well as basic services to be provided to sea arrivals, will be covered.³¹ Particular emphasis will be put on differentiated processes and procedures, referral services and tailored solutions according to specific needs and entitlements of the persons concerned, taking account of international obligations and best practices standards.³²

DURATION: 90 mins.

(30 mins for general discussion; 30 mins for family tracing / restoration of family links debate / 30 mins for Q&A and debate with participants)

CONTENT / LEARNING OBJECTIVES:

- Building on previous sessions dealing with search and rescue and disembarkation, this session will cover post-disembarkation, initial reception, and assistance arrangements in detail, as applicable both generally to all sea arrivals as well as to particular groups thereof (linking the discussion with that conducted during Day 2 on 'Common and differentiated approaches in dealing with vulnerable migrants'). The session will be practitioner-oriented and mainly focus on how to implement the relevant standards, rather than on the standards themselves. Account will be taken of IMO Guidelines on the Treatment of Persons Rescued at Sea; the Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases; the Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea; and Interim Measures for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea.³³

³¹ UNHCR, Reception of Asylum-seekers, Including Standards of Treatment, in the Context of Individual Asylum Claims, Global Consultations on International Protection (3rd Meeting), 4 September 2001, EC/GC/01/17; UNHCR, 'A Model Framework for Cooperation following Rescue at Sea Operations involving Refugees and Asylum-Seekers', Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea - how best to respond?, Summary Conclusions, Djibouti, 8-10 November 2011, available at: <http://www.unhcr.org/4ef338fa9.pdf>; and UNHCR, Guidelines on Temporary Protection or Stay Arrangements, February 2014, available at: <http://www.refworld.org/docid/52fba2404.html>.

³² UNGA, The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees, A/AC.259/17, 11 April 2008.

³³ All available within UNHCR, *Rescue at Sea, Stowaways and Maritime Interception, Selected Reference Materials*, 2nd Ed, December 2011, Section A.II, retrievable from: <http://www.refworld.org/docid/4ee087492.html>.

- Particular attention will be paid to adequate processes and procedures to be established to identify and cater for those with international protection needs as well as other groups with specific needs and/or vulnerabilities, such as children or victims of trafficking.³⁴ Profiling and referral procedures as well as suitable material conditions and basic services are key in this framework.³⁵ Access to adequate solutions and outcomes will also be discussed, according to rights and/or specific needs of different groups, including asylum, return / repatriation, or other migration options.³⁶
- In this framework, an organization with specialist knowledge and expertise such as the ICRC will intervene to discuss family tracing and restoration of family links policies and mechanisms.
- A Q&A session will follow at the end for participants to ask any questions and enter into a dialogue with the specialists on the matter. The possibility of discussing national experiences / practices in this context will be offered for participants to engage in a debate on domestic policies in this field.

³⁴ Art 7 TiP.

³⁵ UNHCR, IMO and ICS, *Rescue at Sea. A Guide to Principles and Practice as Applied to Refugees and Migrants*, January 2015, available at: <http://www.refworld.org/docid/54b36554.html>.

³⁶ UNHCR, *Refugee Protection and Mixed Migration: a 10-Point Plan of Action*, especially chaps 4 to 9, available at: www.unhcr.org/protect/PROTECTION/4742a30b4.pdf. See also, Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea held in Djibouti, 8-10 November 2011, available at: <http://www.refworld.org/docid/4ede0d392.html>.

Session 16: Profiling/screening and identification of persons with specific protection needs

OUTLINE: Upon initial reception, a comprehensive response to mixed arrivals requires the incorporation of screening procedures to identify specific needs. Following a brief presentation on the key aspects of profiling and screening, a group exercise will be conducted, involving practical case studies to elucidate how best to respond to this issue in real-world situations. It will be underlined that, among those with specific needs, asylum seekers and refugees, as persons in need of international protection, are to be channelled through appropriate determination processes to recognize their status, in accordance with relevant international obligations and best practice standards.³⁷ The session will be practical and provide participants with tools and recommendations on how to best undertake these processes.

DURATION: 90 mins.

³⁷ UNHCR, Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing, November 2010, available at: <http://www.unhcr.org/refworld/docid/4cd12d3a2.html>; and UNHCR, Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures), 31 May 2001, EC/GC/01/12, available at: <http://www.unhcr.org/refworld/docid/3b36f2fca.html>.

Day Five

PART IV: DURABLE SOLUTIONS, REGIONAL COOPERATION AND COORDINATION

Session 17: Durable Solutions and Alternatives to Irregular Migration (legal migration channels, temporary protection / stay arrangements, AVRR, etc.)

PURPOSE: Introduction to options to ensure outcomes and solutions for people arriving by sea, in accordance with their specific rights and needs. These include durable solutions, temporary protection or stay arrangements for those recognized as refugees or as otherwise being in need of international protection, together with assisted voluntary return and reintegration (AVRR) of people not in need of international protection, as well as alternative migration options.

DURATION: 90 mins.

CONTENT / LEARNING OBJECTIVES:

- An overview of durable solutions for people who are recognized as refugees or as otherwise being in need of international protection will be provided, including voluntary repatriation, local integration, and resettlement. The nature and availability of the solutions will depend on the opportunities and constraints inherent in each situation. The concept of 'comprehensive solutions' for refugees, including labour mobility and labour migration schemes, as well as examples of such options in other regions, will also be touched upon. The particular situation of stateless persons and minors whose parents could not be identified will be addressed as well.
- The use of temporary protection or stay arrangements,³⁸ as pragmatic tools of international protection, particularly as responses to humanitarian crises or mixed population movements for boat arrivals and rescue at sea scenarios, will be discussed.
- For persons found not to be in need of international protection and without compelling humanitarian reasons to stay in the host country, as well as persons who have not sought asylum and do not appear to be at risk of persecution or ill treatment in case of repatriation, the option of return to the country of origin through IOM's Assisted Voluntary Return and

³⁸ UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, available at: <http://www.refworld.org/docid/52fba2404.html>.

Reintegration (AVRR) scheme will be discussed and an overview of the AVRR programme will be presented.

- Additionally, access to alternative legal migration options (i.e. regularization in the host country or legal onward movement to another country, for the purposes of work, education or family reunion) will be introduced. While such an option is generally only available to individuals with a specific profile or in specific circumstances, there may nevertheless be situations in which such alternative, temporary or longer-term migration options can be accessed. Examples of such avenues that are available in practice in countries in the region will be shared.
- Some countries have also established initiatives to ensure that the specific needs of certain groups, such as victims of trafficking and other especially vulnerable persons, to remain in its territory. Relevant examples will also be discussed. The potential role of civil society organizations and diaspora community groups in this context will be introduced (e.g. regarding private sponsorship programmes).
- A Q&A session and discussion will follow for participants to ask any questions and enter into a dialogue with specialists. This will also provide an opportunity for participants to share national experiences and practices in this context.

Session 18: Regional cooperation and coordination: Identifying best practices

PURPOSE: Emphasis will be on collaborative schemes and fair responsibility sharing. Initiatives as well as proposed models for multilateral cooperation from different regional settings will be presented for the identification of effective policies meeting best practices standards. This will foster cross-regional exchanges and enhance opportunities for mutual learning.

DURATION: 90 mins.

(10 mins for introductory remarks; 30 mins for overview of regional cooperation initiatives; 20 mins for Djibouti conference and MRF; and 30 mins for Q&A)

CONTENT / LEARNING OBJECTIVES:

- Introductory remarks on the vital importance of international cooperation and coordination strategies to administer irregular movements of people by sea in manageable and equitable ways, in a spirit of solidarity and fair-sharing of responsibility, respecting international obligations and best practice standards.
- An overview of several regional cooperation initiatives and IOM support will then be provided, with experiences in North Africa and the Gulf of Aden being examined in detail, focusing especially on the Regional Mixed Migration Secretariat and Mixed Migration Task Forces as examples of best practices for regional cooperation.³⁹ The objective will be to share with participants examples of concrete tools, such as strategic plan, templates, referral models, organigrams, projects management schemes, etc. that can serve as illustration for the development of similar mechanisms in the South-East Asian context.
- The Djibouti conference and Model Regional Framework (MRF) will then be presented,⁴⁰ dealing holistically with irregular movements by sea, including the situation of asylum seekers

³⁹ Sana'a Declaration, Regional Conference on Asylum and Migration from the Horn of Africa to Yemen, 11-13 November 2013, December 2013, available at: [http://www.regionalmms.org/index.php?id=44&tx_ttnews\[tt_news\]=33&cHash=98b90a6b1c28267c814b782c caf1d618](http://www.regionalmms.org/index.php?id=44&tx_ttnews[tt_news]=33&cHash=98b90a6b1c28267c814b782c caf1d618)

⁴⁰ UNHCR, *Refugees and Asylum-Seekers in Distress at Sea - how best to respond? Summary Conclusions*, 5 December 2011, available at: <http://www.refworld.org/docid/4ede0d392.html>, p 4 and Annex 1. See also V Turk and A Klug, Introductory Note to the Djibouti Summary Conclusions on Refugees and Asylum-Seekers in Distress at Sea, (2012) 24 IJRL 482 (open access).

and refugees. Ideally, this part of the session will be led by a country that has decided to implement the MRF, explaining the opportunities and challenges they face.

- A Q&A session will follow at the end for participants to ask any questions and enter into a dialogue with the specialists on the matter. The possibility of discussing first-hand regional and sub-regional experiences/practices in this context will be offered for participants to engage in a mutual-learning exchange on the issue.

Session 19: Group exercise: development of sub-regional / regional Action Plans

OUTLINE: The purpose of this exercise will be to design and develop in small groups a regional/sub-regional action plan and a set of SOPs specific to a particular issue. A facilitator will distribute a set of coloured cards among groups with particular themes, including detection, search and rescue, international protection, disembarkation, law enforcement and control, post-disembarkation arrangements, and durable solutions. Participants will then develop a comprehensive action plan on the particular theme assigned to them. The idea is for participants to collectively cover all the different elements of the holistic approach to irregular maritime movements underpinning this training programme.

DURATION: 60 mins.

Session 20: Group presentations and discussions: sub-regional/ regional action plans

OUTLINE: Each small group will present to the others the outline of their proposed action plan and set of SOP. Further discussion will be take place on key issues and possible ways to deal with them.

DURATION: 60 mins.

Session 21: Workshop evaluation and feedback

DURATION: 15 mins.

Session 22: Distribution of certificates, official close of workshop and farewell

DURATION: 45 mins.

Additional Materials

- Barnes, R, 'The International Law of the Sea and Migration Control', in Ryan and Mitsilegas (eds), *Extraterritorial Immigration Control* (Brill, 2010) 103.
- Goodwin-Gill, GS and McAdam, J, *The Refugee in International Law* (OUP, 2007), ch 5 (especially pp. 267-84).
- Guilfoyle, D, *Shipping Interdiction and the Law of the Sea* (CUP, 2009) , ch 8.
- Klein, N, *Maritime Security and Law of the Sea* (OUP, 2011),
- Moreno-Lax, V, 'Seeking Asylum in the Mediterranean' (2011) 23 *IJRL* 174.
- Moreno-Lax, V and Papastavridis, E (eds), *'Boat Refugees' and Migrants at Sea: A Comprehensive Approach. Integrating Maritime Security with Human Rights* (Brill, forthcoming).
- Papastavridis, E, *The Interdiction of Vessels on the High Seas* (Hart, 2013), ch 8.

